

REMARKS

I. Status of the Application

Claims 1-22 are pending in this application. In the February 22, 2008 final office action, the Examiner:

- A. Objected to claim 21;
- B. Rejected claim 21 under 35 U.S.C. § 112, second paragraph;
- C. Finally rejected claims 1-12 and 22 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,715,390 to Hoffman et al. (hereinafter "Hoffman"), in view of U.S. Patent No. 4,918,728 to Matyas et al. (hereinafter "Matyas"), in view of U.S. Patent No. 6,067,622 to Moore et al. (hereinafter "Moore"), and further in view of U.S. Patent No. 5,107,455 to Haines (hereinafter "Haines"); and
- D. Finally rejected claims 13-20 under 35 U.S.C. § 103(a) as being unpatentable over Hoffman, in view of Matyas, in view of Moore, and further in view of U.S. Patent Publication No. 2004/0264701 to Lee et al. (hereinafter "Lee").

In this response, Applicant traverses the Examiner's final rejection of claims 1-20, and particularly claim 13, arguing that the examiner's final rejection is improper.

II. The Examiner's Final Rejection of Claim 13 is Improper

In the February 22, 2008 Office action, the Examiner finally rejected claims 1-22. However, it is respectfully submitted that at least the final rejection of claim 13 is improper.

As set forth in MPEP § 706.07(a) "second or any subsequent actions on the merits shall be final, *except where the examiner introduces a new ground of rejection* that is [not] necessitated by applicant's amendment of the claims" (emphasis added). Furthermore, as set forth in MPEP § 706.07, "The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and the examiner should be developed".

In the February 22, 2008 final office action, the examiner finally rejected independent claim 13, which has not been amended during prosecution of the present application. However, in the February 22, 2008 final office action, the examiner did not respond to any of applicant's arguments concerning claim 13 and instead stated that "Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new grounds of rejection" (see page 20 of February 22, 2008 final office action where the examiner considers applicants arguments for claim 13 moot in view of the new grounds for rejection).

According to the foregoing passage from the examiner's final office action, an unamended claim (i.e., claim 13) has been finally rejected on new grounds even though the new grounds were not necessitated by applicant's amendment, as claim 13 has never been amended. This is in direct contrast to MPEP § 706.07(a) which requires a new ground of rejection to be necessitated by applicant's amendment in order for the rejection to be final.

Accordingly, for at least this reason, the examiner's final rejection of claim 13 is improper and should be withdrawn

In addition to the above, even if the examiner argues that the rejection of claim 13 is not on new grounds, the examiner has refused to address the arguments made with respect to claim 13 in the November 16, 2007 response. This is clearly seen at page 20 of the February 22, 2008 final office action where the examiner considers applicants arguments for claim 13 moot. Because the examiner has refused to address the arguments made with respect to claim 13 in the November 16, 2007 response, a "clear issue between applicant and the examiner" as required under MPEP § 706.07 has not been developed, as the examiner has made no objection to the arguments made with respect to claim 13.

In view of the foregoing, it is respectfully submitted that the examiner's final rejection of claim 13 is improper. In particular, the examiner can not refuse to address applicant's arguments related to an unamended claim and then finally reject that same unamended claim. Based on the examiner's actions, it is impossible for applicant to address the examiner's rejection of claim 13, and a clear issue has not been developed between the examiner and the applicant. Accordingly, it is respectfully requested that the examiner should withdraw the current final rejection of claim 13 and should provide a new non-final office action that clearly sets forth the grounds of rejection of claim 13.

III. Conclusion

For all of the foregoing reasons, it is respectfully submitted that the examiner's final rejection of claims 1-22 should be withdrawn. Favorable reconsideration and allowance of this application, including pending claims 1- 22, is therefore respectfully requested.

In the event Applicant has inadvertently overlooked the need for an extension of time or payment of an additional fee, the Applicant conditionally petitions therefore, and authorizes any fee deficiency to be charged to deposit account 13-0014.

April 22, 2008

Respectfully submitted,



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